Assembly Bill No. 906

CHAPTER 365

An act to add and repeal Section 22901.1 to the Education Code, and to amend Sections 18670, 19173.1, 19175.3, 19570.1, 19574, 19574.1, 19574.2, 19575, 19578, 19582, 19583, 19702, and 19823 of, to add Sections 20047.5 and 20405.3 to, to add and repeal Sections 20677.2 and 20683.1 of, and to repeal Sections 18523.3, 18717.2, 19818.9, 19826.3, 19836.3, and 22013.82 of, the Government Code, relating to state employees, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2001. Filed with Secretary of State September 27, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 906, Salinas. State employees: memorandum of understanding: State Bargaining Units 10, 12, 13, 16, 18, and 19.

(1) Existing law provides that if any provision of a memorandum of understanding reached between the state employer and a recognized employee organization representing state civil service employees requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act.

This bill would approve provisions that require the expenditure of funds of memoranda of understanding entered into between the state employer and State Bargaining Units 10, 12, 13, 16, 18, and 19 and would provide that the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

This bill would also provide that provisions of the memoranda of understanding approved by this bill that require the expenditure of funds shall not take effect unless funds for these provisions are specifically appropriated by the Legislature, and would provide that if funds for these provisions are not specifically appropriated by the Legislature, the state employer, and the affected employee organization shall meet and confer to renegotiate the affected provisions.

(2) Existing law prescribes contribution rates for state employees who are members of the Defined Benefit Program of the State Teachers' Retirement Plan and for state employees who are state miscellaneous,

state industrial, or state safety members of the Public Employees' Retirement System.

This bill would reduce the contribution rates by $2^1/_2$% during the period from August 31, 2001, to June 30, 2002, inclusive, and by an additional $2^1/_2$% during the period from July 1, 2002, to June 30, 2003, inclusive, for state employees who are members of the Defined Benefit Program of the State Teacher's Retirement Plan; state miscellaneous, state industrial, and state safety members of the Public Employees' Retirement System in State Bargaining Units 10, 12, 13, 16, 18, and 19; and excluded, as defined, and specified non-civil service state miscellaneous, state industrial, and state safety members of the system, as specified.

(3) Existing law establishes personnel and retirement system classifications and salary ranges that are applicable only to state employees in State Bargaining Unit 19.

This bill would delete those provisions.

(4) Existing law establishes procedures relating to state employee discipline and merit awards.

This bill would provide that those discipline procedures, as they apply to members of State Bargaining Units 8, 12, and 13, would be subject to modification pursuant to the terms of a memorandum of understanding between the state employer and that bargaining unit, as specified; and those provisions relating merit awards, as they apply to members of State Bargaining Unit 16, would be subject to modification pursuant to the terms a memorandum of understanding between the state employer and that bargaining unit. The bill would also make certain other employee discipline provisions inapplicable to State Bargaining Unit 16, as specified.

(5) The Public Employees' Retirement Law prescribes increased death or disability benefits for certain state miscellaneous or state industrial members whose death or disability arises out of and in the course of employment, as specified.

This bill would provide that state miscellaneous members employed by the State Department of Developmental Services at Porterville Developmental Center would be eligible for those benefits in specified circumstances.

(6) Under the Public Employees' Retirement Law, specified employees of the Department of Corrections have been classified as state safety members. Existing law provides that when those officers or employees become safety members, they may, within 90 days after notification by the board, elect to remain state industrial members.

This bill would authorize employees of the Department of Corrections in the job classifications of dentist, physician and surgeon, staff

psychiatrist, or podiatrist, who previously elected to remain state industrial members, to elect, during a specified period, to become state safety members.

(7) The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that the purpose of this act is to approve agreements pursuant to Section 3517 of the Government Code entered into by the state employer and a recognized employee organizations.

SEC. 2. The provisions of the following memoranda of understanding prepared pursuant to Section 3517.5 of the Government Code and entered into by the state employer and the following employees organizations, and that require the expenditure of funds, are hereby approved for the purposes of Section 3517.5 of the Government Code:

(a) State Bargaining Unit 10, California Association of Professional Scientists-Professional Scientific Unit.

(b) State Bargaining Unit 12, International Union of Operating Engineers, Craft and Maintenance Unit.

(c) State Bargaining Unit 13, International Union of Operating Engineers-Professional Scientific Unit.

(d) State Bargaining Unit 16, Union of American Physicians and Dentists-Physicians, Dentists, and Podiatrists Unit.

(e) State Bargaining Unit 18, California Association of Psychiatric and Technicians, Psychiatric Technicians Units.

(f) State Bargaining Unit 19, American Federation of State, County and Municipal Employees, Health and Social Services Unit.

SEC. 3. The provisions of the memoranda of understanding approved by Section 2 of this act that are scheduled to take effect on or after July 1, 2001, and that require the expenditure of funds, shall not take effect unless funds for these provisions are specifically appropriated by the Legislature. In the event that funds for these provisions are not specifically appropriated by the Legislature, the state employer and the affected employee organization shall meet and confer to renegotiate the affected provisions.

SEC. 4. Notwithstanding Section 3517.6 of the Government Code, the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

SEC. 5. Section 22901.1 is added to the Education Code, to read:

22901.1. (a) Notwithstanding any provisions of Section 22901 to the contrary, the normal rate of contribution shall be the rate specified in this section for all of the following:

(1) Members of the Defined Benefit Program in State Bargaining Units 10, 12, 16, 18, and 19.

(2) Members of the Defined Benefit Program who are employed by the state and excepted from the definition of ''state employee'' in subdivision (c) of Section 3513 of the Government Code.

(3) Members of the Defined Benefit Program who are officers or employees of the executive branch of state government who are not members of the civil service.

(b) (1) Subject to the provisions of subdivision (d), from August 31, 2001, to June 30, 2002, inclusive, each member described in subdivision (a) shall contribute to the retirement fund an amount equivalent to 5.5 percent of the member's creditable compensation.

(2) Subject to the provisions of subdivision (d), from July 1, 2002, to June 30, 2003, inclusive, each member described in subdivision (a) shall contribute to the retirement fund an amount equivalent to 3 percent of the member's creditable compensation.

(c) This section does not apply to members employed by the California State University or the University of California.

(d) If the membership of State Bargaining Unit 10, 12, 16, 18, or 19 does not ratify its respective memorandum of understanding by December 15, 2001, the normal contribution rate for the members of the Defined Benefit Program of that specific state bargaining unit shall be restored to the level in effect on August 30, 2001, as set forth in Section 22901, for creditable compensation beginning with the December 2001 pay period.

(e) This subdivision shall apply to state employees in State Bargaining Units 10, 12, 16, 18, and 19. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

(f) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 18523.3 of the Government Code is repealed.

SEC. 7. Section 18670 of the Government Code is amended to read:

18670. (a) The board may hold hearings and make investigations concerning all matters relating to the enforcement and effect of this part and rules prescribed under this part. It may inspect any state institution, office, or other place of employment affected by this part to ascertain whether this part and the board rules are obeyed.

The board shall make investigations and hold hearings at the direction of the Governor or the Legislature or upon the petition of an employee or a citizen concerning the enforcement and effect of this part and to enforce the observance of Article VII of the Constitution and of this part and the rules made under this part.

(b) Effective January 1, 1996, this subdivision shall apply only to state employees in State Bargaining Unit 5. For purposes of subdivision (a), any discipline, as defined by Section 19576.1, is not subject to either a board investigation or hearing. Board review shall be limited to acceptance or rejection of discipline imposed pursuant to Section 19576.1.

(c) This subdivision shall apply only to state employees in State Bargaining Unit 8. For the purposes of subdivision (a), any discipline, as defined by the memorandum of understanding or Section 19576.5, is not subject to either a board investigation or hearing.

(d) This subdivision shall apply only to state employees in State Bargaining Unit 11 who have been disciplined or rejected on probation for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement. For purposes of subdivision (a) and in the context of positive drug test results, any discipline, as defined by the memorandum of understanding, and rejections on probation are not subject to either a board investigation or a hearing.

(e) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 8. Section 18717.2 of the Government Code is repealed.

SEC. 9. Section 19173.1 of the Government Code is amended to read:

19173.1. (a) This section shall apply to state employees in State Bargaining Unit 8.

(b) Any probationer may be rejected by the appointing power during the probationary period for reasons relating to the probationer's qualifications, the good of the service, or failure to demonstrate merit, efficiency, and fitness.

(c) A rejection during probationary period is effected by the service upon the probationer of a written notice of rejection that shall include: (1) an effective date for the rejection that shall not be later than the last day of the probationary period; and (2) a statement of the reasons for the rejection. Service of the notice shall be made prior to the effective date of the rejection. Notice of rejection shall be served prior to the conclusion of the prescribed probationary period. The probationary period may be extended when necessary to provide the full notice period required by board rule. Within 15 days after the effective date of the rejection, a copy thereof shall be filed with the board.

SEC. 10. Section 19175.3 of the Government Code is amended to read:

19175.3. (a) Notwithstanding Section 19175, this section shall apply to state employees in State Bargaining Unit 8.

(b) The board at the written request of a rejected probationer, filed within 15 calendar days of the effective date of rejection, shall only review allegations that the rejection was made for reasons of discrimination as defined for the purposes of subdivision (a) of Section 19702, fraud, or political patronage. If the board determines that the rejected probationer has stated a prima face case of discrimination, fraud, or political patronage, the board may investigate the case with or without a hearing and do any one of the following:

(1) Affirm the action of the appointing power.

(2) Modify the action of the appointing power.

(3) Restore the name of the rejected probationer to the employment list for certification to any position within the class, provided that his or her name shall not be certified to the agency by which he or she was rejected, except with the concurrence of the appointing power thereof.

(4) Restore the rejected probationer to the position from which he or she was rejected, but this shall be done only if the board determines that there is substantial evidence to support that the rejection was made for reasons of discrimination as defined for the purposes of subdivision (a) of Section 19702, fraud, or political patronage. At any such investigation or hearing the rejected probationer shall have the burden of proof; subject to rebuttal by him or her, it shall be presumed that the rejection was free from discrimination, fraud, and political patronage, and that the statement of reasons therefor in the notice of rejection is true.

SEC. 11. Section 19570.1 of the Government Code is amended to read:

19570.1. Notwithstanding Section 19570, this section shall apply to state employees in State Bargaining Unit 8. As used in this article, ''disciplinary action'' means dismissal, demotion, suspension, or other disciplinary action. ''Disciplinary action'' does not include a written or oral reprimand taken against an employee. Reprimands may be considered for the purpose of progressive discipline. This article shall not apply to any disciplinary action affecting managerial employees subject to Article 2 (commencing with Section 19590), except as provided in Sections 19590.5, 19592, and 19592.2.

SEC. 12. Section 19574 of the Government Code is amended to read:

19574. (a) The appointing power, or its authorized representative, may take adverse action against an employee for one or more of the causes for discipline specified in this article. Adverse action is valid only if a written notice is served on the employee prior to the effective date of the action, as defined by board rule. The notice shall be served upon the employee either personally or by mail and shall include: (1) a statement of the nature of the adverse action; (2) the effective date of the action; (3) a statement of the reasons therefor in ordinary language; (4) a statement advising the employee of the right to answer the notice orally or in writing; and (5) a statement advising the employee of the time within which an appeal must be filed. The notice shall be filed with the board not later than 15 calendar days after the effective date of the adverse action.

(b) Effective January 1, 1996, this subdivision shall apply only to state employees in State Bargaining Unit 5. This section shall not apply to discipline as defined by Section 19576.1.

(c) This subdivision shall apply only to state employees in State Bargaining Unit 8. This section shall not apply to minor discipline, as defined by Section 19576.5 or a memorandum of understanding.

(e) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 13. Section 19574.1 of the Government Code is amended to read:

19574.1. (a) An employee who has been served with notice of adverse action, or a representative designated by the employee, shall have the right to inspect any documents in the possession of, or under

the control of, the appointing power which are relevant to the adverse action taken or which would constitute ‘‘relevant evidence’’ as defined in Section 210 of the Evidence Code. The employee, or the designated representative, shall also have the right to interview other employees having knowledge of the acts or omissions upon which the adverse action was based. Interviews of other employees and inspection of documents shall be at times and places reasonable for the employee and for the appointing power.

(b) The appointing power shall make all reasonable efforts necessary to assure the cooperation of any other employees interviewed pursuant to this section.

(c) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 14. Section 19574.2 of the Government Code is amended to read:

19574.2. (a) Any party claiming that his or her request for discovery pursuant to Section 19574.1 has not been complied with may serve and file a petition to compel discovery with the Hearing Office of the State Personnel Board, naming as respondent the party refusing or failing to comply with Section 19574.1. The petition shall state facts showing that the respondent party failed or refused to comply with Section 19574.1, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under Section 19574.1, and the ground or grounds of respondent’s refusal so far as known to petitioner.

(b) The petition shall be served upon respondent party and filed within 14 days after the respondent party first evidenced his or her failure or refusal to comply with Section 19574.1 or within 30 days after the request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed within 15 days of the date set for commencement of the administrative hearing, except upon a petition and a determination by the administrative law judge of good cause. In determining good cause, the administrative law judge shall consider the necessity and reasons for the discovery, the diligence or lack of diligence of the moving party, whether the granting of the petition will delay the commencement of the administrative hearing on the date set, and the possible prejudice of the action to any

party. The respondent shall have a right to file a written answer to the petition. Any answer shall be filed with the Hearing Office of the State Personnel Board and the petitioner within 15 days of service of the petition.

Unless otherwise stipulated by the parties and as provided by this section, the administrative law judge shall review the petition and any response filed by the respondent and issue a decision granting or denying the petition within 20 days after the filing of the petition. Nothing in this section shall preclude the administrative law judge from determining that an evidentiary hearing shall be conducted prior to the issuance of a decision on the petition. In the event that a hearing is ordered, the decision of the administrative law judge shall be issued within 20 days of the closing of the hearing.

A party aggrieved by the decision of the administrative law judge may, within 30 days of service of the decision, file a petition to compel discovery in the superior court for the county in which the administrative hearing will be held or in the county in which the headquarters of the appointing power is located. The petition shall be served on the respondent party.

(c) If from a reading of the petition the court is satisfied that the petition sets forth good cause for relief, the court shall issue an order to show cause directed to the respondent party; otherwise the court shall enter an order denying the petition. The order to show cause shall be served upon the respondent and his or her attorney of record in the administrative proceeding by personal delivery or certified mail and shall be returnable no earlier than 10 days from its issuance nor later than 30 days after the filing of the petition. The respondent party shall have the right to serve and file a written answer or other response to the petition and order to show cause.

(d) The court may, in its discretion, order the administrative proceeding stayed during the pendency of the proceeding, and, if necessary, for a reasonable time thereafter to afford the parties time to comply with the court order.

(e) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under Section 19574.1, or is privileged against disclosure under Section 19574.1, the court may order lodged with it matters which are provided in subdivision (b) of Section 915 of the Evidence Code and shall examine the matters in accordance with the provisions thereof.

(f) The court shall decide the case on the matters examined by the court in camera, the papers filed by the parties, and any oral argument and additional evidence as the court may allow.

(g) Unless otherwise stipulated by the parties, the court shall no later than 45 days after the filing of the petition file its order denying or granting the petition; provided, however, that the court may on its own motion for good cause extend the time an additional 45 days. The order of the court shall be in writing setting forth the matters or parts the petitioner is entitled to discover under Section 19574.1. A copy of the order shall forthwith be served by mail by the clerk upon the parties. Where the order grants the petition in whole or in part, the order shall not become effective until 10 days after the date the order is served by the clerk. Where the order denies relief to the petitioning party, the order shall be effective on the date it is served by the clerk.

(h) The order of the superior court shall be final and, except for this subdivision, shall not be subject to review by appeal. A party aggrieved by the order, or any part thereof, may within 30 days after the service of the superior court's order serve and file in the district court of appeal for the district in which the superior court is located, a petition for a writ of mandamus to compel the superior court to set aside, or otherwise modify, its order. Where a review is sought from an order granting discovery, the order of the trial court and the administrative proceeding shall be stayed upon the filing of the petition for writ of mandamus; provided, however, that the court of appeal may dissolve or modify the stay thereafter, if it is in the public interest to do so. Where the review is sought from a denial of discovery, neither the trial court's order nor the administrative proceeding shall be stayed by the court of appeal except upon a clear showing of probable error.

(i) Where the superior court finds that a party or his or her attorney, without substantial justification, failed or refused to comply with Section 19574.1, or, without substantial justification, filed a petition to compel discovery pursuant to this section, or, without substantial justification, failed to comply with any order of court made pursuant to this section, the court may award court costs and reasonable attorney fees to the opposing party. Nothing in this subdivision shall limit the power of the superior court to compel obedience to its orders by contempt proceedings.

(j) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 15. Section 19575 of the Government Code is amended to read:

19575. (a) The employee has 30 calendar days after the effective date of the adverse action to file with the board a written answer to the notice of adverse action. The answer shall be deemed to be a denial of all of the allegations of the notice of adverse action not expressly admitted and a request for hearing or investigation as provided in this article. With the consent of the board or its authorized representative an amended answer may subsequently be filed. If the employee fails to answer within the time specified or after answer withdraws his or her appeal the adverse action taken by the appointing power shall be final. A copy of the employee's answer and of any amended answer shall promptly be given by the board to the appointing power.

(b) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 16. Section 19578 of the Government Code is amended to read:

19578. (a) Except as provided in Section 19576, whenever an answer is filed to an adverse action, the board or its authorized representative shall within a reasonable time hold a hearing. The board shall notify the parties of the time and place of the hearing. The hearing shall be conducted in accordance with the provisions of Section 11513 of the Government Code, except that the employee and other persons may be examined as provided in Section 19580, and the parties may submit all proper and competent evidence against or in support of the causes.

(b) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 17. Section 19582 of the Government Code is amended to read:

19582. (a) Hearings may be held by the board, or by any authorized representative, but the board shall render the decision that in its judgment is just and proper.

During a hearing, after the appointing authority has completed the opening statement or the presentation of evidence, the employee, without waiving his or her right to offer evidence in the event the motion is not granted, may move for a dismissal of the charges.

If it appears that the evidence presented supports the granting of the motion as to some but not all of the issues involved in the action, the board or the authorized representative shall grant the motion as to those issues and the action shall proceed as to the issues remaining. Despite the granting of the motion, no judgment shall be entered prior to a final determination of the action on the remaining issues, and shall be subject to final review and approval by the board.

(b) If a contested case is heard by an authorized representative, he or she shall prepare a proposed decision in a form that may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the board as a public record and furnished to each party within 10 days after the proposed decision is filed with the board. The board itself may adopt the proposed decision in its entirety, may remand the proposed decision, or may reduce the adverse action set forth therein and adopt the balance of the proposed decision.

(c) If the proposed decision is not remanded or adopted as provided in subdivision (b), each party shall be notified of the action, and the board itself may decide the case upon the record, including the transcript, with or without taking any additional evidence, or may refer the case to the same or another authorized representative to take additional evidence. If the case is so assigned to an authorized representative, he or she shall prepare a proposed decision as provided in subdivision (b) upon the additional evidence and the transcript and other papers that are part of the record of the prior hearing. A copy of the proposed decision shall be furnished to each party. The board itself shall decide no case provided for in this subdivision without affording the parties the opportunity to present oral and written argument before the board itself. If additional oral evidence is introduced before the board itself, no board member may vote unless he or she heard the additional oral evidence.

(d) In arriving at a decision or a proposed decision, the board or its authorized representative may consider any prior suspension or suspensions of the appellant by authority of any appointing power, or any prior proceedings under this article.

(e) The decision shall be in writing and contain findings of fact and the adverse action, if any. The findings may be stated in the language of

the pleadings or by reference thereto. Copies of the decision shall be served on the parties personally or by mail.

(f) This section shall not apply to minor discipline, as defined in a memorandum of understanding or by Section 19576.5, for state employees in State Bargaining Unit 8.

(g) This section shall not apply to state employees in State Bargaining Unit 11 who have been disciplined for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement.

(h) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 18. Section 19583 of the Government Code is amended to read:

19583. (a) The board shall render a decision within a reasonable time after the hearing or investigation. The adverse action taken by the appointing power shall stand unless modified or revoked by the board. If the board finds that the cause or causes for which the adverse action was imposed were insufficient or not sustained, or that the employee was justified in the course of conduct upon which the causes were based, it may modify or revoke the adverse action and it may order the employee returned to his or her position with appropriate restoration of backpay and lost benefits either as of the date of the adverse action or as of such later date as it may specify. The decision of the board shall be entered upon the minutes of the board and the official roster.

(b) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 19. Section 19702 of the Government Code is amended to read:

19702. (a) A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability. A person shall not

be retaliated against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. For purposes of this article, ''discrimination'' includes harassment. This subdivision is declaratory of existing law.

(b) As used in this section, the term ''physical disability'' has the definition set forth in Section 12926, as that section presently reads or as it subsequently may be amended.

(c) As used in this section, the term ''mental disability'' has the definition set forth in Section 12926, as that section presently reads or as it subsequently may be amended.

(d) Notwithstanding subdivisions (b) and (c), if the definition of disability used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (b) or (c), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (b) and (c). The definitions of subdivisions (b) and (c) shall not be deemed to refer to or include conditions excluded from the federal definition of ''disability'' pursuant to Section 511 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

(e) If the board finds that a person has engaged in discrimination under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal Code, the board, with the consent of the complainant, shall provide the local district attorney's office with a copy of its decision and order.

(f) If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(g) Any person claiming discrimination within the state civil service may submit a complaint that shall be in writing and set forth the particulars of the alleged discrimination, the name of the appointing authority, the persons alleged to have committed the unlawful discrimination, and any other information that may be required by the

board. The complaint shall be filed with the appointing authority or, in accordance with board rules, with the board itself.

(h) (1) Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in adverse actions or rejections on probation shall be filed in accordance with Sections 19175 and 19575.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in disciplinary actions defined in Section 19576.5 shall be filed in accordance with that section. Complaints of discrimination in all other disciplinary actions shall be filed in accordance with Section 19575. Complaints of discrimination in rejections on probation shall be filed in accordance with Section 19175.3.

(i) (1) When an employee of the appointing authority refuses, or threatens to refuse, to cooperate in the investigation of a complaint of discrimination, the appointing authority may seek assistance from the board. The board may provide for direct investigation or hearing of the complaint, the use of subpoenas, or any other action which will effect the purposes of this section.

(2) This subdivision shall not apply to complaints of discrimination filed in accordance with Section 19576.2.

(j) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 20. Section 19818.9 of the Government Code is repealed.

SEC. 21. Section 19823 of the Government Code is amended to read:

19823. (a) The department may make awards to current or retired state employees who do any of the following:

(1) Propose procedures or ideas which hereafter have been adopted and which will result in eliminating or reducing state expenditures or improving operations; provided, the proposals are placed in effect.

(2) Perform special acts or special services in the public interest.

(3) By their superior accomplishments, make exceptional contributions to the efficiency, economy or other improvement in the operations of the state government.

(b) Awards for superior accomplishments shall be made in accordance with procedures and standards established by the department.

(c) Any award made by the department under the provisions of this section may be paid from the appropriation available to the state agency affected by the award.

(d) The director may adopt rules and regulations to carry out the provisions of this section, and may appoint merit award boards made up of state officers, employees, or citizens to consider employee proposals, special acts, special services, or superior accomplishments, and to make recommendations to the department as to the merits of the proposals, special acts, special services, or superior accomplishments, and whether or not the proposals, special acts, special services, or superior accomplishments justify an award.

(e) Any award granted under the provisions of this section shall be limited to five thousand dollars ($5,000) unless a larger award is approved by concurrent resolution of the Legislature.

(f) Any expenditures made or costs incurred heretofore or hereafter by the director for the purposes of this section may be paid from funds available for the support of the department.

(g) This subdivision shall only apply to state employees in State Bargaining Unit 16. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 22. Section 19826.3 of the Government Code is repealed.

SEC. 23. Section 19836.3 of the Government Code is repealed.

SEC. 24. Section 20047.5 is added to the Government Code, to read:

20047.5. ‘‘Industrial,’’ with respect to state miscellaneous members, means death or disability on or after January 1, 2002, resulting from an injury that is a direct consequence of a violent act perpetrated

on his or her person by a patient or client of the State Department of Developmental Services, at Porterville Developmental Center if both of the following apply:

(a) The member either (1) was performing his or her duties within a treatment ward at the time of the injury, or (2) was not within a treatment ward but was acting within the scope of his or her employment at the hospital and is regularly and substantially as part of his or her duties in contact with the patients or clients.

(b) The member, at the time of injury, was either (1) employed in a state bargaining unit for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section, (2) excluded from the definition of ''state employee'' in subdivision (c) of Section 3513, or (3) a non-elected officer or employee of the executive branch of government who was not a member of the civil service.

SEC. 25. Section 20405.3 is added to the Government Code, to read:

20405.3. (a) A member who is an employee of the Department of Corrections, who made the election to remain under the state industrial membership classification, as provided in subdivision (d) of Section 20405, may elect to be subject to state safety membership within 90 days of notification by the board, if the employee is in any of the following classifications:

(1) Dentist, Correctional Facility.

(2) Physician and Surgeon, Correctional Facility.

(3) Staff Psychiatrist, Correctional Facility.

(4) Podiatrist, Correctional Facility.

(b) The election, which shall be provided by the board on and after January 1, 2002, shall be filed with the board. Past service that would have been credited as a state safety member, but for the member's election to remain under the state industrial formula, shall be credited as safety service.

(c) This section shall apply to state employees in State Bargaining Unit 16 and, if authorized by the Director of the Department of Personnel Administration, state employees that are excluded from the definition of ''state employee'' by paragraph (c) of Section 3513.

SEC. 26. Section 20677.2 is added to the Government Code, to read:

20677.2. (a) Notwithstanding any provisions of Section 20677 to the contrary, the normal rate of contribution shall be the rate specified in this section for all of the following:

(1) State miscellaneous and state industrial members in State Bargaining Units 10, 12, 13, 16, 18, and 19.

(2) State miscellaneous and state industrial members excepted from the definition of ‘‘state employee’’ in subdivision (c) of Section 3513 of the Government Code.

(3) State miscellaneous and state industrial members who are officers or employees of the executive, legislative, or judicial branches of state government who are not members of the civil service.

(b) (1) Subject to the provisions of subdivision (f), for a member described in subdivision (a) whose service is not included in the federal system, 3.5 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered during the period from August 31, 2001, to June 30, 2002, inclusive.

(2) Subject to the provisions of subdivision (f), for a member described in subdivision (a) whose service is not included in the federal system, 1 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered during the period from July 1, 2002, to June 30, 2003, inclusive.

(3) Subject to the provisions of subdivision (f), for a member described in subdivision (a) whose service has been included in the federal system, 2.5 percent of the compensation in excess of five hundred thirteen dollars ($513) per month paid that member for service rendered during the period from August 31, 2001, to June 30, 2002, inclusive.

(4) Subject to the provisions of subdivision (f), for a member described in subdivision (a) whose service has been included in the federal system, zero percent of the compensation in excess of five hundred thirteen dollars ($513) per month paid that member for service rendered during the period from July 1, 2002, to June 30, 2003, inclusive.

(c) Subject to the provisions of subdivision (f) and notwithstanding any provisions of Section 21073.3, a member who elects to become subject to the benefits prescribed in Section 21354.1 and who is subject to this section shall be subject to the normal rate of contribution set forth in this section as of the first day of the month following the date the election is received by the system and shall be applicable to state service rendered subject to Section 21354.1.

(d) This section does not apply to members employed by the California State University or the University of California.

(e) This section does not apply to state miscellaneous and state industrial members who are subject to Section 21076.

(f) If the membership of State Bargaining Unit 10, 12, 13, 16, 18, or 19 does not ratify its respective memorandum of understanding by

December 15, 2001, the normal contribution rate for the members of that specific state bargaining unit shall be restored to the level in effect on August 30, 2001, as set forth in Section 20677, beginning with the December 2001 pay period for the compensation paid that member for service.

(g) This subdivision shall apply to state employees in State Bargaining Units 10, 12, 13, 16, 18, and 19. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

(h) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 27. Section 20683.1 is added to the Government Code, to read:

20683.1. (a) Notwithstanding any provisions of Section 20683 to the contrary, the normal rate of contribution shall be the rate specified in this section for all of the following:

(1) State safety members subject to Section 21369.1 in State Bargaining Units 12, 13, 16, 18, and 19.

(2) State safety members excepted from the definition of ''state employee'' in subdivision (c) of Section 3513.

(3) State safety members who are officers or employees of the executive branch of state government who are not members of the civil service.

(b) (1) Subject to the provisions of subdivision (e), from August 31, 2001, to June 30, 2002, inclusive, the normal rate of contribution shall be 3.5 percent of the compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered.

(2) Subject to the provisions of subdivision (e), from July 1, 2002, to June 30, 2003, inclusive, the normal rate of contribution shall be 1 percent of compensation in excess of three hundred seventeen dollars ($317) per month paid that member for service rendered.

(c) This section does not apply to members employed by the California State University or the University of California.

(d) If the membership of State Bargaining Unit 12, 13, 16, 18, or 19 does not ratify its respective memorandum of understanding by December 15, 2001, the normal contribution rate for the members of that specific state bargaining unit shall be restored to the level in effect on

August 30, 2001, as set forth in Section 20683, beginning with the December 2001 pay period for the compensation paid that member for service.

(e) This subdivision shall apply to state employees in State Bargaining Units 12, 13, 16, 18, and 19. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.

(f) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 28. Section 22013.82 of the Government Code is repealed.

SEC. 29. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to be applicable as soon as possible in the 2001–02 fiscal year, and thereby facilitate the orderly administration of state government at the earliest possible time, it is necessary that this act take effect immediately.

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